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FILED

Name

Alvaro Larios

OCT 29 2007

Prison Number

67226180

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY JP
DEPUTY CLERK

Place of Confinement

Three Rivers F.C.I.

United States District Court

Western

District of

Texas

Case No.

SA06139M

(to be supplied by Clerk of Court)

United States,

SA06 CR137 (1)

v.

SA07CA0881 XR

Alvaro Larios

(full name of movant)

(If movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY
A PERSON IN FEDERAL CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This motion must be legibly handwritten or typewritten, signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay the costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to

the amount of money and securities on deposit to your credit in any account in the institution.

- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each judgment.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
- (7) When the motion is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is 727 E. Durango Blvd., Room-310
San Antonio, TX 78206-1200
- (8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION

1. Name and location of court which entered the judgment of conviction under attack Western District of Texas
2. Date of judgment of conviction 12-8-2006
3. Length of sentence 25 years Sentencing Judge Rodriguez, X
4. Nature of offense, or offenses for which you were convicted Possess
a destructive device which is not registered
5. What was your plea? (Check one)
(a) Not guilty ()
(b) Guilty (X)
(c) Nolo contendere ()

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (check one)
(a) Jury ()
(b) Judge only (X)
7. Did you testify at the trial? Yes () No (X)
8. Did you appeal from the judgment of conviction? Yes () No (X)
9. If you did appeal, answer the following:
(a) Name of court _____
(b) Result _____
(c) Date of result _____
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court? Yes () No (X)
11. If your answer to 10 was "yes," give the following information:
- (a) (1) Name of court _____
(2) Nature of proceeding _____
(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (X)
(5) Result _____
(6) Date of result _____
- (b) As to any second petition, application or motion give the same information:
(1) Name of court _____
(2) Nature of proceeding _____
(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (X)
(5) Result _____
(6) Date of result _____
- (c) As to any third petition, application or motion, give the same information:
(1) Name of court _____

- (2) Nature of proceeding _____
- (3) Grounds raised _____

- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (X)
- (d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?
- (1) First petition, etc. Yes () No (X)
- (2) Second petition, etc. Yes () No (X)
- (3) Third petition, etc. Yes () No (X)
- (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

NOTE: If Petitioner asserts denial of effective assistance of counsel (ground "i"), he must describe with particularity the factual basis for his claim (e.g., lawyer failed to raise insanity defense), and he must describe the prejudice allegedly suffered as a result of the denial of effective assistance of counsel (e.g., convicted of crime that Petitioner lacked the mental capacity to commit).

A. Ground one: Denial of effective assistance of Counsel

Supporting FACTS (tell your story briefly without citing cases or law): I believe my lawyer Jaime E. Guazos didn't do his job because we never had a good understanding when I first came in front of you honor you told me that my sentence didn't carry more than 10 years and I end up getting 25 years my lawyer told me that he couldn't do nothing because we were the one that had the last word I believe I deserve a less sentence so I pray that my request is grant

B. Ground two: _____

Supporting FACTS (tell your story briefly without citing cases of law): _____

C. Ground three:

Supporting FACTS (tell your story briefly without citing cases or law):

D. Ground four:

Supporting FACTS (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court as to the judgment under attack? Yes () No (X)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (a) At preliminary hearing Jaime E. Carrazos
800 Dobrasa Suite 105 San Antonio, TX 78207
- (b) At arraignment and plea Same
- (c) At trial Same
- (d) At sentencing Same
- (e) On appeal N/A
- (f) In any post-conviction proceeding N/A
- (g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes () No (X)

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes () No (X)

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes () No (X)

Wherefore, movant prays that the court grant him all relief to which he may be entitled in this proceeding.

Executed at Three Rivers, Three Rivers, TX
City, County, State

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 10-15-2007
(Date)

Alvaro Larios
Signature of Movant